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Nos. 927 and 928

In the Supreme Court of the United States

OCTOBER TERM, 1943

THE WALLACE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

RICHWOOD CLOTHESPIN & DISH WORKERS' UNION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court below (R. 345–352) is reported in 141 F. (2d) 87. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1–33) are reported in 50 N. L. R. B. 138.

JURISDICTION

The decrees of the court below (R. 352, 413–414) were entered on February 3, 1944. Petitions for rehearing filed by The Wallace Corporation (herein called petitioner) and by Richwood Clothespin & Dish Workers' Union (herein called the Independent) were denied on March 13, 1944 (R. 353–357, 415–419). The petitions for writs of certiorari were filed on April 24, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

Petitioner, the Union, and the Independent entered into agreements, with the Board's approval, purporting to settle a labor dispute, including a strike, and charges filed with the Board by the Union alleging, *inter alia*, that petitioner had interfered with and dominated the Independent in violation of Section 8 (1) and (2) of the Act. Subsequently, as the result of a consent election, the Independent was certified as the bargaining representative of petitioner's employees. Thereafter petitioner, knowing that the Independent intended to refuse membership to certain employees because of their prior activities in behalf of the

[1] Local Union No. 129, United Construction Workers Organizing Committee, affiliated with the C. I. O.

Union, entered into a closed-shop contract with the Independent. Petitioner subsequently discharged employees who had been refused membership in the Independent because of their previous adherence to the Union. The questions presented by the petition are:

1. Whether the Board abused its administrative discretion in considering petitioner's entire course of conduct both before and after the settlement agreements.

2. Whether petitioner's action in entering into and giving effect to the terms of the closed-shop contract with the Independent, when it knew that the Independent intended to refuse membership to employees because they had previously engaged in activities in behalf of the Union, constitutes a violation of Section 8 (3) and (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 24–25.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order (R. 1–33).[2] The pertinent facts, as found by the

[2] The Board issued its decision and order on June 7, 1943 (R. 31). Previously, the Board had vacated an earlier decision and order issued on February 27, 1943, and had heard reargument of the case on May 13, 1943 (R. 6).

Board and shown by the evidence, may be summarized as follows:

From the beginning of the Union's organizing campaign in July 1941, petitioner engaged in a counter-campaign of opposition. On the day the Union held its initial organizing meeting Foreman McIlwee told a group of employees that M. B. Wallace, Jr., petitioner's president, had declared that he would close the plant and move it away rather than recognize the C. I. O. union. He urged the employees to attend the scheduled meeting and to oppose organization of petitioner's employees into the Union (R. 8; 294, 304–305). On another occasion Foreman McIlwee warned employee Dodrill, a leading organizer for the Union and subsequently its president (R. 293, 302), that employees who joined the Union would lose their jobs if Dodrill did not "quit agitating union and getting signers" (R. 8; 294, 303–304). Soon after Dodrill began his organizing activities he was questioned by Foreman Gibson about his union activities, and was warned that President Wallace "would never recognize the C. I. O." (R. 9; 294, 302–303). Another foreman, Harry White, cautioned Dodrill that if he "did go ahead and organize * * * Wallace would not recognize the Union, that we would all be out of a job, he would shut the plant down and move it away

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[1] References preceding the semicolons are to the Board's findings; succeeding references are to the supporting evidence.

* * *" (R. 9; 294–295, 305–306). Foreman White on other occasions told employee Griffie, also a union leader, that "the C. I. O. would never operate in that plant" and that Mr. Wallace had so stated to Plant Manager Davis (R. 9–10; 258–259, 264). Similarly, shortly before the strike in September 1941, Foreman Sleeth addressed anti-union remarks to Dodrill's wife, also an employee, and predicted that "the ones that did not sign up with the C. I. O. didn't have anything to worry about * * * that the company would see that they was taken care of" (R. 9; 276–278).

Early in September 1941 the Union asked petitioner for recognition as the bargaining representative of its employees (R. 11; 259). Petitioner, although challenging the Union's majority claim, refused the latter's offer to have its membership application cards checked against petitioner's pay-roll unless petitioner's Plant Manager were given an opportunity to question each employee individually with respect to his designation of the Union (R. 11; 295–296, 298–299, 311–312). When the Union rejected this proposal, Plant Manager Davis suggested the holding of a Board election. The Union agreed, on condition that petitioner reinstate Dodrill, who had been discharged by petitioner in August (R. 11; 295–296, 299–300, 312–313). Plant Manager Davis rejected this proposal on the ground that Dodrill "was too much of a union agitator" (R. 11; 296).

On September 25 the Union called a strike and established a picket line at the plant, which was shut down the same day (R. 11; 259, 296, 312–313).

With the advent of the strike petitioner launched the Independent. A group of employees arranged to meet at the home of Foreman Gibson on the night of October 2 for the purpose of forming an organization (R. 11–12; 259–260, 266–267, 285–287). On the appointed night Gibson met the group on the street and adjourned the meeting to the home of his assistant, Lundy Groves, explaining that, "I can't have it at my house, there is too many C. I. O. members" (*id.*). Groves worked under Gibson and acted as foreman in Gibson's place when the latter was absent from the plant (R. 13; 260–263, 265–266, 270–271, 283–284, 316–317, 320–321). The Independent was organized at the meeting in the Groves' home. The organization was assisted by B. E. Thompson, a local newspaper editor, who was recommended to the group as an adviser by Irene Weese (R. 12; 190–192, 266–269, 273–275); petitioner's paymaster and confidential secretary to Plant Manager Davis (R. 12; 183–184, 318–319). Thompson became the Independent's business manager, but leadership among the employee participants in the organization was assumed by Groves, together with Reese and Smith, supervisory employees who held positions of responsibility with petitioner similar to

Groves (R. 13, 21; 176–177, 269–270, 277–278, 280–283, 288–292, 297–298, 306–308, 310–311, 317–318). All three men attended the initial organizing meeting of October 2, at Groves' home (R. 268), and all three became members of the Independent's bargaining committee which conducted negotiations with petitioner (R. 12–13; 67, 314). Both Groves and Reese were members of the Board of Directors of that organization (R. 21; 275), and Reese was its president at the time it first requested recognition by petitioner (R. 13; 313). Groves also solicited members for the Independent during the strike (R. 14; 260).

On October 10, 1941, the Union filed charges with the Board, alleging, *inter alia*, that petitioner had violated Section 8 (2) of the Act by sponsoring the formation of the Independent (R. 13; 116–117). On October 14, the Independent requested recognition by petitioner as bargaining representative of the employees (R. 13; 313). On October 31, the Independent filed with the Board a petition for investigation and certification of representatives of petitioner's employees (R. 13–14; 91).

During the ensuing two and one-half months, representatives of petitioner, the Board, and the two unions engaged in negotiations looking toward settlement of the entire controversy, including disposition of the Union's charge and the Independent's petition (R. 14–15; 82, 235–239, 296–297, 300–301, 314–315). Meanwhile the Independent's

membership drive proceeded, coupled with a company-sponsored back-to-work movement. Petitioner mailed post cards to employees and sent foremen to their homes soliciting their return to work (R. 14; 271; 279–280, 308–310, 315–316, 322). During this period petitioner's foremen solicited employees to join the Independent and warned them that the plant would "never run under the C. I. O." (R. 14; 260, 279, 308–309).

Between January 13 and 19, 1942, petitioner, the Independent, and the Union entered into agreements providing for termination of the strike, immediate resumption of operations at the plant, and an election to be conducted by the Board to determine whether either of the two unions represented a majority of petitioner's employees (R. 15–16; 63–72). The agreement provided further that if either union won the election, petitioner would enter into a "union shop" contract with it (R. 16; 66).[4] Finally, the election agreement provided for settlement and withdrawal of the Union's pending charges, in consideration of petitioner's promise not to dominate or interfere with the Independent or otherwise to interfere with its employees' rights under the

[4] The provision regarding a union shop reads as follows (R. 66):

"The Company further agrees that if either Union is proven to represent a majority of its employees by said vote, it will recognize a Union Shop, providing that the Company shall at all times retain the right to suspend, hire, or discharge any employee for proper and just cause."

Act (R. 16; 63–65). At the election, held on January 30, the Independent received a majority of the votes cast, and on February 4 it was certified by the Board's Regional Director as the exclusive collective bargaining representative of petitioner's employees (R. 19; 73–74).

Following the election petitioner and the Independent entered into bargaining negotiations. On February 28, the latter wrote to petitioner demanding a closed-shop contract as a necessary means of preserving its small majority against possible dissipation at the hands of those employees who preferred the Union (R. 19; 84–86). The letter stated that, since the election, petitioner had hired several new employees who "are favorable to the interests of our opponents" and that "if other similar-minded employees are given jobs in your plant, it won't be long until our majority of 15 will be either jeopardized or overcome." Declaring that the Independent intended to use the proposed closed-shop agreement, not merely to require all employees to become members but also to remove from the plant those employees who, prior to the election, had exercised their rights under the Act by participating in the Union's organizing campaign, the letter stated (R. 85; italics added):

> The "Closed Shop" will, therefore give us some control in preventing the hiring of additional employees who are unfavorable to our interests and who would fur-

> ther jeopardize our majority. It would also provide us with a legal means of disposing of any present employees, including Harvey Dudrill, whom our members have declared by unanimous ballot that they will not work with, whose presence in the plant is unfavorable to our interests because *those who are so unfavorable will not be permitted to become members of our organization* and without such membership they would not be permitted to work in the plant under a closed shop contract which we respectfully insist we MUST have.

On March 7, petitioner and the Independent executed a 2-year contract which provided that all present and future employees eligible for membership in the Independent "shall become members" within 10 days from the date of the contract or from date of hiring (R. 19; 75–81). On the same day a copy of the contract was posted in the plant (R. 19; 319–320). Thereafter, between March 7 and March 18, 31 of the petitioner's employees who applied for membership in the Independent were rejected because of their past adherence to the Union (R. 20, 22–23; 43, 263–264, 272–273, 297). On March 16, petitioner posted a notice that, pursuant to the contract, only members in good standing in the Independent would be permitted to continue in petitioner's employ on and after March 18 (R. 19–20; 90, 319), and on the latter date it excluded from its plant and dismissed the 31 employees who had been rejected by

the Independent, together with 12 other employees who had not applied for membership in the organization (R. 20; 121–122).

Upon these facts the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act (R. 28–29). The Board considered the effect of the settlement agreements, the consent election, and the certification of the Independent, and concluded that in all the circumstances, including the making of the closed-shop contract, the purposes of the statute would be effectuated by considering petitioner's entire course of conduct, both before and after the settlement agreement (R. 22). Accordingly, the Board ordered petitioner to cease and desist from its violations of the Act, to cease and desist from giving effect to any contract between it and the Independent, to withdraw recognition from and disestablish the Independent as representative of any of its employees for collective bargaining purposes, to offer reinstatement with back pay to the 43 employees discriminated against, and to post appropriate notices (R. 29–31).

Thereafter petitioner and the Independent filed, in the court below, petitions to review and set aside the Board's order, and the Board filed its request that the order be enforced. On February 3, 1944, the court held that the Board's order should be enforced (R. 345–352, 413–414).

ARGUMENT

1. Petitioner challenges the Board's finding of a violation of Section 8 (2) on the ground that the Board acted improperly in considering events antedating the settlement agreements and the certification of the Independent pursuant to the consent election (Pet. 12–14, 18–21, 30–34).[1] We submit that this contention is without merit. It is "a fundamental conception of our law * * * [that] there can be no rule which would restrict the Board from an appropriate inquiry into a pending complaint * * * [and that] the extent to which the Board may refuse to go into matter raised by a complaint, either because the matter is stale or because it has been satisfactorily concluded theretofore, must rest in the Board's discretion." *National Labor Relations Board* v. *T. W. Phillips Gas & Oil Co.*, 141 F. (2d) 304, 305–306 (C. C. A. 3).

The court below held (R. 351):

> The Board's power to prevent unfair labor practices is not limited by agreements that may have been made. * * * Set-

[1] The Independent raises the same question (Ind. Pet. 4, 15–16) and in addition contends that certain of the Board's findings of fact are not supported by substantial evidence (Ind. Pet. 4, 16–18). The latter contention presents no question of general importance, and in any event the evidence summarized in the Statement (*supra*, pp. 4–11) fully supports the challenged findings, as the court below held (R. 346–348).

tlements approved by the Board should ordinarily be observed and administrative orders should not be lightly disregarded; (Cf. *Matter of Simplicity Pattern Co.*, 16 N. L. R. B. 291); but these are guides for the exercise of discretion by the Board, not limitations upon its power. It is the duty of the Board to prevent unfair labor practices; and the fact that it may have certified a union as a bargaining representative does not limit its power later to declare such union to be company dominated and order its disestablishment, if such course is seen to be proper in the light of subsequent developments.

This holding of the court below is in accord with the uniform decisions of the Circuit Courts of Appeals which have passed upon the question. *Sperry Gyroscope Co.* v. *National Labor Relations Board*, 129 F. (2d) 922, 926, 931 (C. C. A. 2); *National Labor Relations Board* v. *Hawk & Buck Co.*, 120 F. (2d) 903, 905 (C. C. A. 5); *National Labor Relations Board* v. *Thompson Products, Inc.*, 130 F. (2d) 363, 367–368 (C. C. A. 6); *National Labor Relations Board* v. *The Standard Oil Company*, decided March 20, 1944 (C. C. A. 6) enforcing with modifications 47 N. L. R. B. 517; *National Labor Relations Board* v. *Swift & Co.*, 127 F. (2d) 30, 31 (C. C. A. 6); *Canyon Corporation* v. *National Labor Relations Board*, 128 F. (2d) 953, 955–956 (C. C. A. 8), enforcing 33 N. L. R. B. 885, 890, 897–898, 903; *Utah Copper Co.* v.

National Labor Relations Board, 139 F. (2d) 788, 791 (C. C. A. 10), certiorari denied April 24, 1944, *sub nom. Independent Ass'n of Mill Workers* v. *National Labor Relations Board*, No. 802, this Term; *Magnolia Petroleum Company* v. *National Labor Relations Board*, 115 F. (2d) 1007, 1012–1013 (C. C. A. 10); *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. (2d) 84, 92–94 (App. D. C.), certiorari denied, 314 U. S. 674; cf. *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. (2d) 51, 54–55 (C. C. A. 4), certiorari denied April 3, 1944, No. 735, this Term; *National Labor Relations Board* v. *Sun Shipbuilding and Dry Dock Co.*, 135 F. (2d) 15, 23 (C. C. A. 3).

The Board found here, upon the evidence summarized above (*supra*, pp. 4–11), that prior to the settlement agreements, the consent election, and the certification of the Independent, petitioner had engaged in unfair labor practices in violation of Section 8 (1) and (2) of the Act by disparaging the Union and discouraging the employees from joining it (R. 8–10, 20–21), and by dominating, interfering with, and supporting the Independent (R. 11–14, 21). The Board found further that, subsequent to the settlement agreements and certification, petitioner engaged in unfair labor practices by executing and giving effect to the terms of the closed-shop contract with the Independent, when it knew that the Independent intended to use the contract to oust from their jobs employees who had supported the

Union during the election campaign (R. 19–20, 22–25). By this action, the Board found, petitioner discriminated against the Union adherents because of their membership in and activities on behalf of the Union, in violation of Section 8 (3) of the Act (R. 25), and further supported the Independent in violation of Section 8 (2) (*id.*). In these circumstances the Board followed its established practice of considering the employer's entire course of conduct in cases involving settlement agreements or consent elections where the employer has engaged in unfair practices both before and after executing such agreements (R. 22, 24–25).[*] As the court below held (R. 350–351), the Board clearly acted reasonably and did not in any sense abuse the administrative discretion it was required to exercise:

> * * * even if discharges such as those here involved be not considered of themselves unfair labor practices within the meaning of the Act, we think that the Board was justified under the circumstances, notwithstanding the agreement that had been made and the certification of the Independent, in going fully into the question of company domination and holding the Independent to be a company-dominated union and hence not en-

[*] *E. g.*, *Matter of Harry A. Halff*, 16 N. L. R. B. 667, 679–682; *Matter of Chicago Casket Company*, 21 N. L. R. B. 235, 252–256; Cf. *Matter of Wickwire Brothers*, 16 N. L. R. B. 316, 325; *Matter of Hope Webbing Company*, 14 N. L. R. B. 55, 74–75.

> titled to invoke the closed-shop provision. * * * [The] high-handed conduct of the Independent union here, is in violation of the clear spirit of the compromise agreement as well as of the rights of the minority, and the acquiescence of the company in that conduct, furnished ample justification for the Board to inquire fully into the history of the union * * * (R. 350–351).

The validity of the Board's order is thus sustained by its finding that the Independent existed in violation of Section 8 (2) of the Act. For in these circumstances any contract petitioner entered into with the Independent was invalid *ab initio*, and a closed-shop contract with it could not, under the proviso to Section 8 (3) of the Act, be made the basis for discharging employees on the ground that they had not become members of the Independent, regardless of the reason for their nonmembership. *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685, 694. Consequently, the Board's conclusion that the discharges were discriminatory and in violation of Section 8 (3) of the Act was proper on this finding alone, irrespective of other considerations.

2. The validity of the Board's order does not depend merely upon its finding with respect to the second question. This question was considered by the Board only because, following its self-imposed rule of not going behind settlement

agreements unless there have been unfair labor practices subsequent thereto, it would have refused to consider the evidence that prior to the making of the settlement agreements petitioner had violated Section 8 (2) of the Act with respect to the contracting union (R. 20–21), unless it first found that petitioner, subsequent to the settlement agreements, entered into and acquiesced in the use of the contract for the purpose of effecting the discriminatory discharge of Union adherents in violation of Section 8 (3) of the Act (R. 24–25). Inasmuch as the court below decided the question as an alternative ground for supporting the Board's order, we discuss it below.

Petitioner contends that its action in making the closed-shop contract and carrying out its provisions, with the knowledge from the beginning that the Independent intended to refuse membership to employees for the reason that they had previously engaged in activities in behalf of the Union, is nevertheless protected by the proviso to Section 8 (3) of the Act (Pet. 19, 23–30).[7] The Independent advances a similar contention (Ind. Pet. 12–15).

[7] Petitioner contends also that the Board's finding that petitioner had knowledge of the Independent's intent is not supported by the record (Pet. 36–38). This contention is without merit. As the court below held (R. 347–348), the evidence set forth in the Statement (*supra*, pp. 9–10) constitutes ample support for the Board's finding (R. 19, 22).

We submit that this contention is without merit. The Board's conclusion, affirmed by the court below (R. 349–350), is supported by the history and purpose of the proviso to Section 8 (3) of the Act, which permits closed-shop contracts under certain limited conditions.

The Board stated in its decision that the proviso "is not a severable and separate portion of the Act [but] must be construed in the light of the statutory statements of policy and general provisions of the Act * * * the express purpose [of which] is to insure employees of their right of self-organization and a free choice of representatives" (R. 23). *National Labor Relations Board* v. *Jones & Laughlin Corp.*, 301 U. S. 1, 33–34; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 182–183.

The legislative history of the Act supports the Board's construction. The provision was not intended to grant employers *carte blanche* to join with majority unions in overriding the basic statutory rights of minority employees. On the contrary, Section 8 (3) was included in the Act for the purpose of limiting the conditions under which closed-shop agreements might be made.[8] The Report of the Senate Committee on Education and Labor characterized as "absolutely false" the

[8] The Board properly placed a narrow construction upon the limiting terms of the proviso. *United States* v. *Sharton*, 285 U. S. 518, 521–522; *United States* v. *McElvain*, 272 U. S. 633, 639; *United States* v. *Dickson*, 15 Pet. 141, 165.

notion that the "proviso attaches special legal sanctions to the closed shop or seeks to impose it upon all industry." It stated further that the "assertion that the bill favors the closed shop is particularly misleading in view of the fact that the proviso in two respects actually narrows the now existent law regarding closed shop agreements."[9]

In *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685, this Court approved the Board's view that the majority-rule principle recognized by Section 9 (a) and the closed-shop proviso to Section 8 (3) of the Act do not constitute a license to the employer to join with the majority representatives of his employees in interfering with and coercing minority employees in the exercise of their broad rights under the Act. Noting the "illuminating comment" in the Senate Report quoted above, the Court stated (315 U. S. at 694–695):

> The provision for a closed shop, as permitted by Section 8 (3), follows grammatically a prohibition of discrimination in hiring. These words of the exception must have been carefully chosen to express the precise nature and limits of permissible employer activity in union organization.

In that case the Court rejected the company's contention that the Act permitted employer-assist-

[9] S. Rep. No. 573, 74th Cong., 1st Sess., pp. 12–13. To the same effect is the report in the House of Representatives, H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 19–20.

ance to a union once it had attained the status of majority representative.

It is clear, therefore, that the limitation which the proviso to Section 8 (3) imposes upon the individual employee's absolute freedom of choice of a bargaining representative is intrinsically related to, and carries no broader implication than, the limitation embodied in the recognition of the principle of majority rule in Section 9 (a). Under the latter section the employee is represented in matters of collective bargaining by the choice of the majority. Under the proviso to Section 8 (3), the employee, to preserve his employment, is further required to be a member of the union selected by the majority, as provided in Section 9 (a), if the employer enters into a valid closed-shop contract with that union. That is the limited extent of the "coercion" and "discrimination" implied by the closed-shop provision. The Board has properly held, therefore, in the instant case and in others,[*] that the right of an employer and a majority representative to enter into a closed-shop contract under the proviso to Section 8 (3) may not be diverted to thwart the basic purpose of the Act to insure to employees generally the right freely to select bargaining representatives.

The destructive effect of a construction contrary to that made by the Board may easily be

[*] *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 555, 46 N. L. R. B. 1040; *Matter of Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310.

demonstrated. If the employer and the majority representative were free to enter into a closed-shop contract designed to discriminate against the defeated minority group of employees, all of the employees could be deprived of their freedom to choose a representative. In all cases where it appeared likely, or even possible, that a closed-shop agreement might follow the selection of a majority representative, the employees, in order to protect their jobs, would be impelled to speculate as to which organization would ultimately win the support of the majority and thus avoid becoming marked as supporters of the minority group. The employees' right to choose a bargaining representative would consist merely of the right to guess which of two or more competing unions would ultimately be selected by the majority. It is inconceivable that so complete a negation of the whole purpose of the Act should be implied by a proviso, the sole purpose of which was to permit, under narrow restrictions, the voluntary execution of closed-shop agreements between an employer and the legal representatives of all his employees.

Petitioner's complaint that the Board's decision in effect directs the employer to "dictate admission to membership" in a union "if the majority becomes vindictive," and thus risk prosecution for violation of the Act in another respect, is not justified (Pet. 24–25). The Board's decision presents no such dilemma. The decision, as

the court below held (R. 349), contrary to the repeated assertions of petitioner (Pet. 19, 24–25, 27–28) and of the Independent (Ind. Pet. 12–15), in no sense touches the right of a union to select its membership free from outside interference. The Board held only that a closed-shop contract, while expressly permitted under the Act, may not be entered into by an employer with knowledge that it is intended to be used to discriminate against employees because of their legitimate union activities engaged in prior to the execution of the contract.[11]

3. The other contentions of petitioner warrant but brief consideration. Its protestations of good faith (Pet. 29, 36–37) are immaterial. *National Labor Relations Board* v. *Hudson Motor Car Company*, 128 F. (2d) 528, 532–533 (C. C. A. 6). See also *National Labor Relations Board* v. *Star Publishing Company*, 97 F. (2d) 465, 470 (C. C. A. 9); *Kansas City Power and Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 346–347 (C. C. A. 8); *McQuay-Norris Mfg. Co.* v. *National Labor Relations Board*, 116 F. (2d) 748, 752 (C. C. A. 7), certiorari denied, 313 U. S. 565. Cf. *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. (2d) 84, 87 (App.

[11] *National Labor Relations Board* v. *Lion Shoe Co.*, 97 F. (2d) 448 (C. C. A. 1), setting aside 2 N. L. R. B. 819, 831 and *Hamer* v. *Nashawena Mills*, 52 N. E. (2d) 22 (Mass.) cited by petitioner (Pet. 25–27), are not in point. Both cases involved employees who refused to join the union holding the closed-shop contract.

D. C.), certiorari denied, 314 U. S. 674. Similarly, its argument that the settlement agreement required it to enter into the closed-shop contract does not meet the conclusion of the Board (R. 24) and of the court below (R. 349–350) that petitioner was not thereby compelled to violate the Act. Finally, petitioner's contention that the Board's decision is invalid insofar as it finds that petitioner illegally discriminated against the 12 employees who had not applied for membership in the Independent (Pet. 27, 38) is groundless. Since the contract itself was invalid because petitioner entered into it with knowledge that it was going to be used to discriminate against employees who were advocates of the Union, it could not be the legal ground for discharging any employee.

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any important question warranting review. The petitions for writs of certiorari should therefore be denied.

Respectfully submitted.

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MAY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as

provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1944